

The opinion in support of the decision being entered today was not written
for publication and is not binding precedent of the Board.

Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL REASONER

Appeal No. 2001-0709
Application No. 09/115,764

ON BRIEF

MAILED

MAR 29 2002

**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

Before COHEN, ABRAMS, and STAAB, Administrative Patent Judges.
ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 4-40.
Claims 6-16, 22 and 29 have been indicated as being allowable if rewritten in
independent form, claims 30-36 have been withdrawn as being directed to a non-
elected invention, and claims 1-3 have been canceled (Answer, page 2). This leaves
claims 4, 5, 17-21, 23-28 and 37-40 before us on appeal.

We AFFIRM-IN-PART.

BACKGROUND

The appellant's invention relates to a motion transmitting remote control assembly. An understanding of the invention can be derived from a reading of exemplary claim 4, which appears in the appendix to the appellant's Brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Glover et al. (Glover)	4,598,809	Jul. 8, 1986
Adams et al. (Adams)	5,119,689	Jun. 9, 1992
Teichert	5,339,783	Aug. 23, 1994

Claim 27 stands rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

Claims 17, 27 and 37-40 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

Claims 4, 17, 20 and 21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Teichert.

Claims 4, 5, 17-21, and 23-27 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Glover.

Claims 20, 28 and 37-40 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Adams.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the Answer (Paper No. 20) and the final rejection (Paper No. 15) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 19) and Reply Brief (Paper No. 21) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

This is an application for reissue of U.S. Patent No. 5,653,148, issued August 5, 1997. The purpose of the reissue application is to remove from patent claim 1 (since canceled) a limitation which, according to the reissue declaration, mistakenly was entered into the file in an amendment owing to a "mental error." The appellant's invention is directed to a motion transmitting assembly for attaching together first and second conduit sections through which a flexible motion transmitting core is movably supported in such a manner as to allow the distance between the opposed ends of the

first and second conduit assemblies to be adjusted. This is accomplished by first and second adjustment components attached, respectively, to the first and second conduit assemblies and which are in telescoping relationship with one another and can be fixed in an adjusted position by a retainer.

The Rejection Under The First Paragraph Of Section 112

It is the examiner's position that the subject matter recited in claim 27 is not present in the application in that the locking member 19 is not disclosed as being in contact with the spring 22 and therefore it is unclear how the locking member "abuts and reacts with the spring 22 *during assembly* of the male member 18 into the female member 20 such that the adjustment components 28, 20 are biased together to shorten the length of the conduit sections 14, 16" (Paper No. 15, pages 4 and 5).

We agree with the appellant that this rejection should not be sustained. We first note that the claim does not require that the locking member abut with the spring, as the examiner has stated, but that it define an abutment that "reacts" with the spring. While it is true that the drawings do not clearly show the relationship between locking member 19 and spring 22, it is our view that one of ordinary skill in the art would have understood from a perusal of the specification and drawings that a face of locking member 19 abuts collar 26, which in turn is in contact with spring 22 and therefore, as claimed, the locking member defines an abutment that "reacts" with the spring. The

artisan also would have understood that the phrase "during assembly" recited in the claim refers not to the initial step of installing male component 18 in female component 20 prior to the installation of locking member 19, but to the subsequent step in the assembly process of inserting locking member 19 into the slot in the side of member 20, whereupon it engages retainer 24 and thus reacts with spring 22 to tend to shorten the overall length of the components. With regard to both of these issues, attention is invited to the explanation provided in the paragraph bridging columns 2 and 3 of the specification.

It therefore is our conclusion that the appellant did have possession of the subject matter recited in claim 27 at the time the application was filed, and we will not sustain this rejection.

The Rejection Under The Second Paragraph Of Section 112

The first element of this rejection is that claim 17 is indefinite since it depends from canceled claim 1. While the appellant has stated this will be corrected at some future time, it presently stands and therefore this rejection of claim 17 is sustained.¹

The second element of the rejection focuses on the language upon which the rejection of claim 27 under the first paragraph of Section 112 was based, which we decided above was supported by the specification. With regard to the rejection under

¹ However, in the interest of judicial economy, we shall consider claim 17 as depending from claim 4 in evaluating the rejections based on prior art.

the second paragraph of Section 112, it is our view that this subject matter is not indefinite in that the metes and bounds of the claim can readily be determined, for the same reasons as were expressed above. This rejection of claim 27 is not sustained.

The third element of this rejection is that there is no antecedent basis in claim 37 for "said members." This is true, and although the appellant has stated this error will be corrected, the fact that it presently exists causes us to sustain the rejection of claims 37-40 on the basis of indefiniteness.

The Rejections Under Section 102(b)

Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention. See, for example, In re Paulsen, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994).

The first of these rejections is that claims 4, 17, 20 and 21 are anticipated by Teichert. We do not agree. Teichert is directed to an apparatus for absorbing over-movement of a spring-cushioned throttle cable when full throttle is reached. There are several limitations recited in independent claims 4 and 20 which are not present in Teichert. Both claims require that there be a flexible motion transmitting core element that is "movably supported in" first and second conduit sections. In order to read these claims on the Teichert device, the examiner has designated the first and second

conduit sections to be elements 36 and 58 (see Figure 3). Flexible motion transmitting core 12 is movably supported in conduit section 36. However, such is not the case with regard to element 58, which is an extension of element 54 and thus is "fixed" to the core along with element 54 (see column 5, line 60 et seq.). Since the core is not movable in both of elements 36 and 58, the Teichert device lacks this limitation in claims 4 and 20. Both claims also require that there be elements reacting with the spring to bias the adjustment components "together in the direction to shorten the overall length of said conduit sections" (emphasis added). We do not agree with the examiner's position that this is present in Teichert, for we find it to be clear that Teichert's spring 38 biases elements 36 and 58 away from one another, thus tending to lengthen the overall length of the conduit sections (see Figures 2A and 2B). This provides another reason why the reference is not anticipatory of these claims. On these bases we will not sustain this rejection of claims 4 and 20 or of claims 17 and 21, which depend, respectively, therefrom.

The second rejection under Section 102 is that claims 4, 5, 17-21 and 23-27 are anticipated by Glover. This reference discloses a cable and sleeve vehicle clutch pedal connector whose purpose is to take up any existing slack on each operation. The examiner designates the first and second conduit sections to be elements 7 and 9 and the adjustment components to be elements 5 and 20 (see Figures 3 and 4). We first

note that in the Glover arrangement the adjustment components do not interconnect the conduit sections as required by independent claims 4, 18, 19 and 20, in that section 9 is free to move independently of adjustment components 5 and 20. This being the case, Glover does not meet the terms of these claims and the rejection fails at this early juncture. In addition, as was the case with Teichert, Glover's spring 35 biases conduit sections 5 and 9 away from each other, which would tend to lengthen their overall length, rather than shorten it as is required by these claims. The rejection of independent claims 4, 18, 19 and 20 and dependent claims 5, 17, 21 and 23-27 as being anticipated by Glover is not sustained.

The third rejection under Section 102 is that claims 20, 28 and 37-40 are anticipated by Adams, which is directed to a device for adjusting the length of Bowden cables. According to the examiner, Adams discloses first and second conduit sections in the form of the two portions of the cable sheath (unnumbered), adjustment components 14 and 21, and a spring 20. The spring is seated on one end against a flange on adjustment component 14 and on the other end against a rotatable locking sleeve 13 which in turn bears against a shoulder on the other adjustment component 21. As we understand this invention, component 21 is fixed to support bracket 8 and the facing ends of the Bowdin wire conduits both are received in component 14. Thus, when component 14 is unlocked and moved telescopically with respect to component

21, it would appear that both conduits move together with it, which is quite different from the manner in which the appellant's invention operates. However, in any event, it is clear to us that the coil spring biases the adjustment components (14 and 21) in such a fashion as to tend to lengthen the overall length of the conduit sections, rather than shorten it, as the claim requires. This reference therefore fails to anticipate the subject matter of independent claims 20 and 37 and the rejection of these claims and dependent claims 28 and 38-40 is not sustained.

SUMMARY

The rejection of claim 27 under 35 U.S.C. § 112, first paragraph, is not sustained.

The rejection of claim 27 under 35 U.S.C. § 112, second paragraph, is not sustained.

The rejection of claims 17 and 37-40 under 35 U.S.C. § 112, second paragraph, is sustained.

None of the three rejections under 35 U.S.C. § 102(b) are sustained.

The decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal
may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART



IRWIN CHARLES COHEN
Administrative Patent Judge



NEAL E. ABRAMS
Administrative Patent Judge



LAWRENCE J. STAAB
Administrative Patent Judge

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Appeal No. 2001-0709
Application No. 09/115,764

Page 11

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